

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERRYESSA UNION SCHOOL
DISTRICT.

OAH CASE NO. 2012120298

ORDER DENYING REQUEST TO
STAY EXPULSION PROCEEDINGS

On December 7, 2012, Carolyn Nedley, Attorney at Law, filed with the Office of Administrative Hearings (OAH) a request for an expedited due process hearing. Student also filed a request to stay expulsion proceedings.¹ On December 11, 2012, the Berryessa Union School District (District) filed an opposition. Student filed a reply on December 11, 2012.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

¹ Student also filed a request for stay put which is addressed in a separate order.

DISCUSSION

Student is a 12-year-old boy who is eligible for special education services due to his specific learning disability. Most recently, Student was attending seventh grade at Piedmont Middle School as specified in his January 2012 individual education program (IEP). On November 15, 2012, the District suspended Student for a disciplinary incident and recommended that he be expelled. At a manifestation determination meeting on December 4, 2012, the District team members determined that Student's conduct was not a manifestation of his disability and that his IEP was being fully implemented. Student's suspension was extended and he is pending an expulsion hearing.² Parent disagrees with the findings of the manifestation determination team and is seeking an appeal through an expedited hearing with OAH. Student's due process hearing is scheduled to commence January 15, 2013.

Student seeks an order suspending his expulsion proceedings until the issues in his expedited due process hearing request are resolved. Expulsion proceedings are governed by their own statutes (Ed. Code, § 48900 et. seq.), and OAH does not have any jurisdiction over expulsion proceedings. OAH has no jurisdiction to stay expulsion proceedings initiated by the District, and Student has provided not authority to the contrary. Accordingly, Student's request to stay expulsion proceedings is denied.

IT IS SO ORDERED.

Dated: December 12, 2012

/s/

THERESA RAVANDI

Administrative Law Judge

Office of Administrative Hearings

² The expulsion hearing was originally scheduled for December 10, 2012. The District indicates in its opposition that the hearing will be briefly continued to address parental concerns.